



Senate

General Assembly

File No. 599

January Session, 2011

Substitute Senate Bill No. 882

Senate, April 20, 2011

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM, FILING REQUIREMENTS OF STATE CONTRACTORS, AND EVALUATION OF CONTRACTORS AND SUBCONTRACTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-101qq of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) A state agency or institution or quasi-public agency that is
4 seeking a contractor for a large state construction or procurement
5 contract shall provide the summary of state ethics laws developed by
6 the Office of State Ethics pursuant to section 1-81b to any person
7 seeking a large state construction or procurement contract. Such
8 person shall [promptly] affirm annually to the agency or institution, in
9 writing or electronically, (1) receipt of such summary, and (2) that key
10 employees of such person have read and understand the summary and
11 agree to comply with the provisions of state ethics law, provided if
12 there is any change to the information contained in such affirmation,

13 such person shall provide such updated affirmation to the agency or
14 institution not later than thirty days after such change. No state agency
15 or institution or quasi-public agency shall accept a bid for a large state
16 construction or procurement contract [without] unless the bidder has
17 provided such affirmation.

18 (b) Each large state construction or procurement contractor shall
19 provide the summary of state ethics laws described in subsection (a) of
20 this section to all subcontractors and consultants and obtain an
21 affirmation from each subcontractor and consultant that such
22 subcontractor and consultant has received such summary and key
23 employees of such subcontractor and consultant have read and
24 understand the summary and agree to comply with its provisions. The
25 contractor shall provide such affirmations to the state agency annually,
26 or not more than thirty days after any change in such affirmation,
27 whichever is earlier. Failure to submit such affirmations in a timely
28 manner shall be cause for termination of the large state construction or
29 procurement contract.

30 (c) Each contract with a contractor, subcontractor or consultant
31 described in subsection (a) or (b) of this section shall incorporate such
32 summary by reference as a part of the contract terms.

33 Sec. 2. Section 4-252 of the general statutes is repealed and the
34 following is substituted in lieu thereof (*Effective October 1, 2011*):

35 (a) On and after July 1, 2006, no state agency or quasi-public agency
36 shall execute a large state contract unless the state agency or quasi-
37 public agency obtains the [written] certifications described in this
38 section. Each such certification shall be sworn as true to the best
39 knowledge and belief of the person signing the certification, subject to
40 the penalties of false statement.

41 (b) The official or employee of such state agency or quasi-public
42 agency who is authorized to execute [said contract] state contracts
43 shall certify that the selection of the most qualified or highest ranked
44 person, firm or corporation was not the result of collusion, the giving

45 of a gift or the promise of a gift, compensation, fraud or inappropriate
46 influence from any person.

47 (c) The official of the person, firm or corporation [awarded the
48 contract,] who is authorized to execute [the contract,] state contracts
49 shall certify annually, or not more than thirty days after any change in
50 such certification, whichever is earlier:

51 (1) That no gifts were made [between the date that the state agency
52 or quasi-public agency began planning the project, services,
53 procurement, lease or licensing arrangement covered by the contract
54 and the date of execution of the contract,] by (A) such person, firm,
55 corporation, (B) any principals and key personnel of the person, firm
56 or corporation, who [participated] participate substantially in
57 preparing [the bid or proposal or the negotiation of the contract] bids,
58 proposals or negotiating state contracts, or (C) any agent of such
59 person, firm, corporation or principals and key personnel, who
60 [participated] participate substantially in preparing [the bid or
61 proposal or the negotiation of the contract] bids, proposals or
62 negotiating state contracts, to (i) any public official or state employee
63 of the state agency or quasi-public agency soliciting bids or proposals
64 for [the contract] state contracts, who [participated] participates
65 substantially in the preparation of [the] bid [solicitation or request]
66 solicitations or requests for proposals for [the contract] state contracts
67 or the negotiation or award of [the contract] state contracts, or (ii) any
68 public official or state employee of any other state agency, who has
69 supervisory or appointing authority over such state agency or quasi-
70 public agency;

71 (2) That no such principals and key personnel of the person, firm or
72 corporation, or agent of such person, firm or corporation or principals
73 and key personnel, knows of any action by the person, firm or
74 corporation to circumvent such prohibition on gifts by providing for
75 any other principals and key personnel, official, employee or agent of
76 the person, firm or corporation to provide a gift to any such public
77 official or state employee; and

78 (3) That the person, firm or corporation [made the bid or proposal]
79 makes bids or proposals without fraud or collusion with any person.

80 (d) Any bidder or proposer that does not make the [certifications]
81 certification required under subsection (c) of this section shall be
82 disqualified and the state agency or quasi-public agency shall award
83 the contract to the next highest ranked proposer or the next lowest
84 responsible qualified bidder or seek new bids or proposals.

85 (e) Each state agency and quasi-public agency shall include in the
86 bid specifications or request for proposals for a large state contract [(1)
87 the date that the state agency or quasi-public agency began planning
88 the project, services, procurement, lease or licensing arrangement to be
89 covered by the contract, and (2)] a notice of the certification
90 requirements of subsections (c) and (d) of this section.

91 Sec. 3. Subsection (c) of section 4a-60 of the general statutes is
92 repealed and the following is substituted in lieu thereof (*Effective*
93 *October 1, 2011*):

94 (c) (1) [Prior to entering into a contract] Contractors who have one
95 or more contracts with the state valued at less than fifty thousand
96 dollars for each year of the contract [, the contractor] shall annually
97 provide the state or such political subdivision of the state with a
98 written or electronic representation that complies with the
99 nondiscrimination agreement and warranty under subdivision (1) of
100 subsection (a) of this section, provided if there is any change in such
101 representation, the contractor shall provide the updated representation
102 to the state or such political subdivision not later than thirty days after
103 such change.

104 (2) [Prior to entering into a contract] Contractors who have one or
105 more contracts valued at fifty thousand dollars or more for any year of
106 the contract [, such contractor] shall annually provide the state or such
107 political subdivision of the state, or if there is a change in the
108 representation, not later than thirty days after such change with any
109 one of the following:

110 (A) Documentation in the form of a company or corporate policy
111 adopted by resolution of the board of directors, shareholders,
112 managers, members or other governing body of such contractor that
113 complies with the nondiscrimination agreement and warranty under
114 subdivision (1) of subsection (a) of this section;

115 (B) Documentation in the form of a company or corporate policy
116 adopted by a prior resolution of the board of directors, shareholders,
117 managers, members or other governing body of such contractor if (i)
118 the prior resolution is certified by a duly authorized corporate officer
119 of such contractor to be in effect on the date the documentation is
120 submitted, and (ii) the head of the agency of the state or such political
121 subdivision, or a designee, certifies that the prior resolution complies
122 with the nondiscrimination agreement and warranty under
123 subdivision (1) of subsection (a) of this section; or

124 (C) Documentation in the form of an affidavit signed under penalty
125 of false statement by a chief executive officer, president, chairperson or
126 other corporate officer duly authorized to adopt company or corporate
127 policy that certifies that the company or corporate policy of the
128 contractor complies with the nondiscrimination agreement and
129 warranty under subdivision (1) of subsection (a) of this section and is
130 in effect on the date the affidavit is signed.

131 Sec. 4. Subsection (b) of section 4a-60a of the general statutes is
132 repealed and the following is substituted in lieu thereof (*Effective*
133 *October 1, 2011*):

134 (b) (1) [Prior to entering into a contract] Contractors who have one
135 or more contracts valued at less than fifty thousand dollars for each
136 year of the contract [, the contractor] shall provide the state or such
137 political subdivision of the state annually with a written representation
138 that complies with the nondiscrimination agreement and warranty
139 under subdivision (1) of subsection (a) of this section, provided if there
140 is any change in such representation, the contractor shall provide the
141 updated representation to the state or such political subdivision not
142 later than thirty days after such change.

143 (2) [Prior to entering into a contract] Contractors who have one or
144 more contracts valued at fifty thousand dollars or more for any year of
145 the contract [, such contractor] shall annually provide the state or such
146 political subdivision of the state, or if there is a change in the
147 representation, not later than thirty days after such change with any of
148 the following:

149 (A) Documentation in the form of a company or corporate policy
150 adopted by resolution of the board of directors, shareholders,
151 managers, members or other governing body of such contractor that
152 complies with the nondiscrimination agreement and warranty under
153 subdivision (1) of subsection (a) of this section;

154 (B) Documentation in the form of a company or corporate policy
155 adopted by a prior resolution of the board of directors, shareholders,
156 managers, members or other governing body of such contractor if (i)
157 the prior resolution is certified by a duly authorized corporate officer
158 of such contractor to be in effect on the date the documentation is
159 submitted, and (ii) the head of the agency of the state or such political
160 subdivision, or a designee, certifies that the prior resolution complies
161 with the nondiscrimination agreement and warranty under
162 subdivision (1) of subsection (a) of this section; or

163 (C) Documentation in the form of an affidavit signed under penalty
164 of false statement by a chief executive officer, president, chairperson or
165 other corporate officer duly authorized to adopt company or corporate
166 policy that certifies that the company or corporate policy of the
167 contractor complies with the nondiscrimination agreement and
168 warranty under subdivision (1) of subsection (a) of this section and is
169 in effect on the date the affidavit is signed.

170 (3) For the purposes of this section, "contract" includes any
171 extension or modification of the contract, and "contractor" includes any
172 successors or assigns of the contractor. For the purposes of this section,
173 "contract" does not include a contract where each contractor is (A) a
174 political subdivision of the state, including, but not limited to, a
175 municipality, (B) a quasi-public agency, as defined in section 1-120, (C)

176 any other state, as defined in section 1-267, (D) the federal government,
177 (E) a foreign government, or (F) an agency of a subdivision, agency,
178 state or government described in subparagraph (A), (B), (C), (D) or (E)
179 of this subdivision.

180 Sec. 5. Section 4a-81 of the general statutes is repealed and the
181 following is substituted in lieu thereof (*Effective October 1, 2011*):

182 (a) [On and after July 13, 2005, no] No state agency or quasi-public
183 agency shall execute a contract for the purchase of goods or services,
184 which contract has a total value to the state of fifty thousand dollars or
185 more in any calendar or fiscal year, unless the state agency or quasi-
186 public agency obtains the [written] affidavit described in subsection (b)
187 of this section.

188 (b) (1) The chief official of the bidder or vendor [awarded] for a
189 contract described in subsection (a) of this section or the individual
190 [awarded such contract] who is authorized to execute such contract [.]
191 shall attest annually in an affidavit to the state or quasi-public agency
192 as to whether any consulting agreement has been entered into in
193 connection with such [contract] state contracts, provided if there is any
194 change in the information contained in the affidavit, such updated
195 affidavit shall be submitted not later than thirty days after any such
196 change. Such affidavit shall be required if any duties of the consultant
197 included communications concerning business of [such] a state agency,
198 whether or not direct contact with a state agency, state or public
199 official or state employee was expected or made. As used in this
200 section "consulting agreement" means any written or oral agreement to
201 retain the services, for a fee, of a consultant for the purposes of (A)
202 providing counsel to a contractor, vendor, consultant or other entity
203 seeking to conduct, or conducting, business with the state, (B)
204 contacting, whether in writing or orally, any executive, judicial, or
205 administrative office of the state, including any department,
206 institution, bureau, board, commission, authority, official or employee
207 for the purpose of solicitation, dispute resolution, introduction,
208 requests for information, or (C) any other similar activity related to

209 such [contract. Consulting agreement] state contracts. "Consulting
210 agreement" does not include any agreements entered into with a
211 consultant who is registered under the provisions of chapter 10 as of
212 the date such affidavit is submitted in accordance with the provisions
213 of this section.

214 (2) Such affidavit shall be sworn as true to the best knowledge and
215 belief of the person signing the certification on the affidavit and shall
216 be subject to the penalties of false statement.

217 (3) Such affidavit shall include the following information for each
218 consulting agreement listed: The name of the consultant, the
219 consultant's firm, the basic terms of the consulting agreement, a brief
220 description of the services provided, and an indication as to whether
221 the consultant is a former state employee or public official. If the
222 consultant is a former state employee or public official, such affidavit
223 shall indicate his or her former agency and the date such employment
224 terminated.

225 (4) Such affidavit shall be amended whenever the bidder or vendor
226 awarded [the] a contract enters into any new consulting agreement
227 during the term of such contract or contracts.

228 (c) Each state agency and quasi-public agency shall include a notice
229 of the affidavit requirements of this section in the bid specifications or
230 request for proposals for any contract that is described in subsection
231 (a) of this section.

232 (d) In the event that a bidder or vendor refuses to submit the
233 affidavit required under subsection (b) of this section, such bidder or
234 vendor shall be disqualified and the state agency or quasi-public
235 agency shall award the contract to the next highest ranked vendor or
236 the next lowest responsible qualified bidder or seek new bids or
237 proposals.

238 Sec. 6. Subsection (d) of section 4a-100 of the general statutes is
239 repealed and the following is substituted in lieu thereof (*Effective*

240 *October 1, 2011*):

241 (d) [The applicant] Each applicant shall include a statement of
242 financial condition prepared by a certified public accountant which
243 includes information concerning the applicant's assets and liabilities,
244 [plant and equipment, bank and credit references,] except if the
245 applicant has been accepted into the bonding program of a certified
246 community development financial institution, the applicant need only
247 provide the financial documents required by such institution for the
248 applicant to qualify for such program. Each applicant shall provide a
249 bonding company [and maximum] letter stating the aggregate work
250 capacity and single project limit bonding capacity, and other
251 information as the commissioner deems relevant to an evaluation of
252 the applicant's financial capacity and responsibility. For purposes of
253 this subsection, "certified community development financial
254 institution" means a community development bank, credit union or
255 loan or venture capital fund that provides financial products and
256 services in economically distressed markets and that is certified by the
257 Certified Development Financial Institution Fund of the United States
258 Department of the Treasury.

259 Sec. 7. Section 4a-60g of the general statutes is repealed and the
260 following is substituted in lieu thereof (*Effective October 1, 2011*):

261 (a) As used in this section and sections 4a-60h to 4a-60j, inclusive,
262 the following terms have the following meanings:

263 (1) "Small contractor" means any contractor, subcontractor,
264 manufacturer, [or] service company or nonprofit corporation (A) that
265 [has been doing business under the same ownership or management
266 and has maintained] maintains its principal place of business in the
267 state, [for a period of at least one year immediately prior to the date of
268 application for certification under this section,] and (B) that had gross
269 revenues not exceeding fifteen million dollars in the most recently
270 completed fiscal year prior to such application, [, and (C) at least
271 fifty-one per cent of the ownership of which is held by a person or
272 persons who exercise operational authority over the daily affairs of the

273 business and have the power to direct the management and policies
274 and receive the beneficial interests of the business, except that a
275 nonprofit corporation shall be construed to be a small contractor if
276 such nonprofit corporation meets the requirements of subparagraphs
277 (A) and (B) of this subdivision] "Small contractor" does not include any
278 person who is affiliated with another person if both persons
279 considered together have a gross revenue exceeding fifteen million
280 dollars.

281 (2) "State agency" means each state board, commission, department,
282 office, institution, council or other agency with the power to contract
283 for goods or services itself or through its head.

284 (3) "Minority business enterprise" means any small contractor (A)
285 fifty-one per cent or more of the capital stock, if any, or assets of which
286 are owned by a person or persons (i) who exercise operational
287 authority over the daily affairs of the enterprise, (ii) who have the
288 power to direct the management and policies and receive the beneficial
289 interest of the enterprise, and (iii) who are members of a minority, as
290 such term is defined in subsection (a) of section 32-9n, (B) who is an
291 individual with a disability, or (C) which is a nonprofit corporation in
292 which fifty-one per cent or more of the persons who (i) exercise
293 operational authority over the enterprise, and (ii) have the power to
294 direct the management and policies of the enterprise are members of a
295 minority, as defined in this subsection, or are individuals with a
296 disability.

297 (4) "Affiliated" means the relationship in which a person directly, or
298 indirectly through one or more intermediaries, controls, is controlled
299 by or is under common control with another person.

300 (5) "Control" means the power to direct or cause the direction of the
301 management and policies of any person, whether through the
302 ownership of voting securities, by contract or through any other direct
303 or indirect means. Control shall be presumed to exist if any person,
304 directly or indirectly, owns, controls, holds with the power to vote, or
305 holds proxies representing, twenty per cent or more of any voting

306 securities of another person.

307 (6) "Person" means any individual, corporation, limited liability
308 company, partnership, association, joint stock company, business trust,
309 unincorporated organization or other entity.

310 (7) "Individual with a disability" means an individual (A) having a
311 physical or mental impairment that substantially limits one or more of
312 the major life activities of the individual, which mental impairment
313 may include, but is not limited to, having one or more mental
314 disorders, as defined in the most recent edition of the American
315 Psychiatric Association's "Diagnostic and Statistical Manual of Mental
316 Disorders", or (B) having a record of such an impairment.

317 (8) "Nonprofit corporation" means a nonprofit corporation
318 incorporated pursuant to chapter 602 or any predecessor statutes
319 thereto.

320 (b) It is found and determined that there is a serious need to help
321 small contractors, minority business enterprises, nonprofit
322 organizations and individuals with disabilities to be considered for
323 and awarded state contracts for the construction, reconstruction or
324 rehabilitation of public buildings, the construction and maintenance of
325 highways and the purchase of goods and services. Accordingly, the
326 necessity, in the public interest and for the public benefit and good, of
327 the provisions of this section, sections 4a-60h to 4a-60j, inclusive, and
328 sections 32-9i to 32-9p, inclusive, is declared as a matter of legislative
329 determination. Notwithstanding any provisions of the general statutes
330 to the contrary, and except as set forth herein, the head of each state
331 agency and each political subdivision of the state other than a
332 municipality shall set aside in each fiscal year, for award to small
333 contractors, on the basis of competitive bidding procedures, contracts
334 or portions of contracts for the construction, reconstruction or
335 rehabilitation of public buildings, the construction and maintenance of
336 highways and the purchase of goods and services. Eligibility of
337 nonprofit corporations under the provisions of this section shall be
338 limited to predevelopment contracts awarded by the Commissioner of

339 Economic and Community Development for housing projects. The
340 total value of such contracts or portions thereof to be set aside by each
341 such agency shall be at least twenty-five per cent of the total value of
342 all contracts let by the head of such agency in each fiscal year,
343 provided that neither: (1) A contract that may not be set aside due to a
344 conflict with a federal law or regulation; or (2) a contract for any goods
345 or services which have been determined by the Commissioner of
346 Administrative Services to be not customarily available from or
347 supplied by small contractors shall be included. Contracts or portions
348 thereof having a value of not less than twenty-five per cent of the total
349 value of all contracts or portions thereof to be set aside shall be
350 reserved for awards to minority business enterprises.

351 (c) The head of any state agency or political subdivision of the state
352 other than a municipality may, in lieu of setting aside any contract or
353 portions thereof, require any general or trade contractor or any other
354 entity authorized by such agency to award contracts, to set aside a
355 portion of any contract for subcontractors who are eligible for set-aside
356 contracts under this section. Nothing in this subsection shall be
357 construed to diminish the total value of contracts which are required to
358 be set aside by any state agency or political subdivision of the state
359 other than a municipality pursuant to this section.

360 (d) The heads of all state agencies and of each political subdivision
361 of the state other than a municipality shall notify the Commissioner of
362 Administrative Services of all contracts to be set aside pursuant to
363 subsection (b) or (c) of this section at the time that bid documents for
364 such contracts are made available to potential contractors.

365 (e) The awarding authority shall require that a contractor or
366 subcontractor awarded a contract or a portion of a contract under this
367 section perform not less than fifteen per cent of the work with the
368 workforces of such contractor or subcontractor and shall require that
369 not less than twenty-five per cent of the work be performed by
370 contractors or subcontractors eligible for awards under this section. A
371 contractor awarded a contract or a portion of a contract under this

372 section shall not subcontract with any person with whom the
373 contractor is affiliated. No person who is affiliated with another person
374 shall be eligible for awards under this section if both affiliated persons
375 considered together would not qualify as a small contractor or a
376 minority business enterprise under subsection (a) of this section. The
377 awarding authority shall require that a contractor awarded a contract
378 pursuant to this section submit, in writing, an explanation of any
379 subcontract to such contract that is entered into with any person that is
380 not eligible for the award of a contract pursuant to this section, prior to
381 the performance of any work pursuant to such subcontract.

382 (f) The awarding authority may require that a contractor or
383 subcontractor awarded a contract or a portion of a contract under this
384 section furnish the following documentation: (1) A copy of the
385 certificate of incorporation, certificate of limited partnership,
386 partnership agreement or other organizational documents of the
387 contractor or subcontractor; (2) a copy of federal income tax returns
388 filed by the contractor or subcontractor for the previous year; and (3)
389 evidence of payment of fair market value for the purchase or lease by
390 the contractor or subcontractor of property or equipment from another
391 contractor who is not eligible for set-aside contracts under this section.

392 (g) The awarding authority or the Commissioner of Administrative
393 Services or the Commission on Human Rights and Opportunities may
394 conduct an audit of the financial, corporate and business records and
395 conduct an investigation of any small contractor or minority business
396 enterprise which applies for or is awarded a set-aside contract for the
397 purpose of determining eligibility for awards or compliance with the
398 requirements established under this section.

399 (h) The provisions of this section shall not apply to any state agency
400 or political subdivision of the state other than a municipality for which
401 the total value of all contracts or portions of contracts of the types
402 enumerated in subsection (b) of this section is anticipated to be equal
403 to ten thousand dollars or less.

404 (i) In lieu of a performance, bid, labor and materials or other

405 required bond, a contractor or subcontractor awarded a contract under
406 this section may provide to the awarding authority, and the awarding
407 authority shall accept a letter of credit. Any such letter of credit shall
408 be in an amount equal to ten per cent of the contract for any contract
409 that is less than one hundred thousand dollars and in an amount equal
410 to twenty-five per cent of the contract for any contract that exceeds one
411 hundred thousand dollars.

412 (j) (1) Whenever the awarding authority has reason to believe that
413 any contractor or subcontractor awarded a set-aside contract has
414 wilfully violated any provision of this section, the awarding authority
415 shall send a notice to such contractor or subcontractor by certified
416 mail, return receipt requested. Such notice shall include: (A) A
417 reference to the provision alleged to be violated; (B) a short and plain
418 statement of the matter asserted; (C) the maximum civil penalty that
419 may be imposed for such violation; and (D) the time and place for the
420 hearing. Such hearing shall be fixed for a date not earlier than fourteen
421 days after the notice is mailed. The awarding authority shall send a
422 copy of such notice to the Commission on Human Rights and
423 Opportunities.

424 (2) The awarding authority shall hold a hearing on the violation
425 asserted unless such contractor or subcontractor fails to appear. The
426 hearing shall be held in accordance with the provisions of chapter 54.
427 If, after the hearing, the awarding authority finds that the contractor or
428 subcontractor has wilfully violated any provision of this section, the
429 awarding authority shall suspend all set-aside contract payments to
430 the contractor or subcontractor and may, in its discretion, order that a
431 civil penalty not exceeding ten thousand dollars per violation be
432 imposed on the contractor or subcontractor. If such contractor or
433 subcontractor fails to appear for the hearing, the awarding authority
434 may, as the facts require, order that a civil penalty not exceeding ten
435 thousand dollars per violation be imposed on the contractor or
436 subcontractor. The awarding authority shall send a copy of any order
437 issued pursuant to this subsection by certified mail, return receipt
438 requested, to the contractor or subcontractor named in such order. The

439 awarding authority may cause proceedings to be instituted by the
440 Attorney General for the enforcement of any order imposing a civil
441 penalty issued under this subsection.

442 (k) On or before January 1, 2000, the Commissioner of
443 Administrative Services shall establish a process for certification of
444 small contractors and minority business enterprises as eligible for
445 set-aside contracts. Each certification shall be valid for a period not to
446 exceed two years. Any paper application for certification shall be no
447 longer than six pages. The Department of Administrative Services shall
448 maintain on its web site an updated directory of small contractors and
449 minority business enterprises certified under this section.

450 (l) On or before August 30, 2007, and annually thereafter, each state
451 agency and each political subdivision of the state other than a
452 municipality setting aside contracts or portions of contracts shall
453 prepare a report establishing small and minority business set-aside
454 program goals for the twelve-month period beginning July first in the
455 same year. Each such report shall be submitted to the Commissioner of
456 Administrative Services, the Commission on Human Rights and
457 Opportunities and the cochairpersons and ranking members of the
458 joint standing committees of the General Assembly having cognizance
459 of matters relating to planning and development and government
460 administration and elections.

461 (m) On or before November 1, 1995, and quarterly thereafter, each
462 state agency and each political subdivision of the state other than a
463 municipality setting aside contracts or portions of contracts shall
464 prepare a status report on the implementation and results of its small
465 business and minority business enterprise set-aside program goals
466 during the three-month period ending one month before the due date
467 for the report. Each report shall be submitted to the Commissioner of
468 Administrative Services and the Commission on Human Rights and
469 Opportunities. Any state agency or political subdivision of the state,
470 other than a municipality, that achieves less than fifty per cent of its
471 small contractor and minority business enterprise set-aside program

472 goals by the end of the second reporting period in any twelve-month
473 period beginning on July first shall provide a written explanation to
474 the Commissioner of Administrative Services and the Commission on
475 Human Rights and Opportunities detailing how the agency or political
476 subdivision will achieve its goals in the final reporting period. The
477 Commission on Human Rights and Opportunities shall: (1) Monitor
478 the achievement of the annual goals established by each state agency
479 and political subdivision of the state other than a municipality; and (2)
480 prepare a quarterly report concerning such goal achievement. The
481 report shall be submitted to each state agency that submitted a report,
482 the Commissioner of Economic and Community Development, the
483 Commissioner of Administrative Services and the cochairpersons and
484 ranking members of the joint standing committees of the General
485 Assembly having cognizance of matters relating to planning and
486 development and government administration and elections. Failure by
487 any state agency or political subdivision of the state other than a
488 municipality to submit any reports required by this section shall be a
489 violation of section 46a-77.

490 [(n) On or before January 1, 2000, and annually thereafter, the
491 Department of Administrative Services shall establish a precertification
492 list of small contractors and minority business enterprises who have
493 established a principal place of business in the state but have not
494 maintained such place of business for one year and are not in the
495 directory prepared pursuant to subsection (k) of this section. An
496 awarding agency may select a small contractor or minority business
497 enterprise from such precertification list only after such awarding
498 agency makes a good faith effort to find an eligible small contractor or
499 minority business enterprise in the directory and determines that no
500 small contractor or minority business enterprise is qualified to perform
501 the work required under the contract.]

502 [(o)] (n) Nothing in this section shall be construed to apply to the
503 four janitorial contracts awarded pursuant to subsections (b) to (e),
504 inclusive, of section 4a-82.

505 Sec. 8. Subsection (e) of section 4a-101 of the general statutes is
506 repealed and the following is substituted in lieu thereof (*Effective*
507 *October 1, 2011*):

508 (e) No person, public agency, employee of a public agency or
509 certifying official of a public agency shall be held liable to any
510 contractor or subcontractor for any loss or injury sustained by such
511 contractor or subcontractor as the result of the completion of an
512 evaluation form, as required by this section or section 4a-100, as
513 amended by this act, unless such person, agency, employee or official
514 is found by a court of competent jurisdiction to have acted in a wilful,
515 wanton or reckless manner.

516 Sec. 9. (NEW) (*Effective from passage*) (a) On or before January 1,
517 2012, the Commissioner of Administrative Services, in consultation
518 with the Labor Commissioner, the president of The University of
519 Connecticut and the Commissioners of Public Works and
520 Transportation, or their designees, shall submit a report, in accordance
521 with the provisions of section 11-4a of the general statutes, to the
522 Governor and the joint standing committee of the General Assembly
523 having cognizance of matters relating to labor. Such report shall
524 include (1) an analysis of any law or economic factor that results in a
525 resident bidder being at a disadvantage to a nonresident bidder in
526 submitting the lowest responsible qualified bid, (2) the reason any
527 enacted law designed to give preference to state citizens for
528 employment on public works projects is not being enforced, and (3)
529 recommendations for administrative or legislative action, within the
530 confines of clause 3 of section 8 of article 1 of the United States
531 Constitution, to increase the number of state contracts awarded to
532 resident bidders through an in-state contract preference or otherwise.

533 (b) On or before July 1, 2012, the Commissioner of Administrative
534 Services shall develop and implement a program to increase the
535 number of state contracts awarded to resident bidders through an in-
536 state contract preference or other method selected by the
537 commissioner, provided such program shall not violate clause 3 of

538 section 8 of article 1 of the United States Constitution. In developing
 539 such program, the commissioner shall consider the findings contained
 540 in the report made in accordance with subsection (a) of this section.

541 Sec. 10. Section 4-251 of the general statutes is repealed. (*Effective*
 542 *from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	1-101qq
Sec. 2	<i>October 1, 2011</i>	4-252
Sec. 3	<i>October 1, 2011</i>	4a-60(c)
Sec. 4	<i>October 1, 2011</i>	4a-60a(b)
Sec. 5	<i>October 1, 2011</i>	4a-81
Sec. 6	<i>October 1, 2011</i>	4a-100(d)
Sec. 7	<i>October 1, 2011</i>	4a-60g
Sec. 8	<i>October 1, 2011</i>	4a-101(e)
Sec. 9	<i>from passage</i>	New section
Sec. 10	<i>from passage</i>	Repealer section

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes several changes to state contracting laws and does not result in a fiscal impact.

The Out Years: None

OLR Bill Analysis**sSB 882*****AN ACT CONCERNING THE STATE SET-ASIDE PROGRAM, FILING REQUIREMENTS OF STATE CONTRACTORS, AND EVALUATION OF CONTRACTORS AND SUBCONTRACTORS.*****SUMMARY:**

This bill makes several changes to state contracting laws. It requires contractors and bidders to indicate their compliance with state ethics laws, including gift bans; anti-discrimination laws; and laws banning collusion annually, rather than each time they enter into a state contract and update the information within 30 days of any change. The bill does not specify when the contractors must provide the initial information.

The bill eliminates the requirement that a prequalification applicant's financial statements be prepared by a certified public accountant (CPA) if the applicant is being assisted by a certified community development financial institution.

The bill potentially allows the Department of Administrative Services (DAS) to certify more people and businesses as small contractors for the purpose of the state set-aside program

The bill also extends liability protections for people who complete evaluations of contractors or subcontractors. It requires DAS to submit a report on in-state contracting and develop and implement a program to increase the number of state contracts awarded to in-state firms. Lastly, it repeals an obsolete statute.

EFFECTIVE DATE: October 1, 2011, except for the DAS report and the repeal of the obsolete statute, which are effective upon passage.

§§ 1-5 & 10 — CONTRACTOR AFFIRMATIONS AND CERTIFICATIONS

Under current law, contractors and bidders must file certain affirmations with a state contracting agency or quasi-public agency each time they enter into a state contract. Such affirmations concern (1) state ethics laws, (2) gifts, (3) nondiscrimination policies, and (4) consulting agreements. Contractors must provide the appropriate affirmation(s) to be awarded state contracts.

The bill requires contractors to file these affirmations annually and, with certain exceptions, electronically. However, the bill does not specify (1) an annual filing date or (2) who would determine this date (the agency or the contractor). Contractors must update the affirmations within 30 days of any change to the information they contain.

Ethics

By law, contractors and bidders for large state construction or procurement contracts (i.e., those costing more than \$500,000) must affirm (1) their receipt of a summary of state ethics laws and (2) that key personnel have read and understand the summary and agree to comply with the ethics laws. Large state construction or procurement contractors must obtain these affirmations from their subcontractors and consultants and provide them to the state contracting agency.

The bill requires these affirmations to be filed annually instead of each time a contract is entered into. However, for subcontractors and consultants, it states that the affirmations must be filed annually or not later than 30 days after any change to the affirmation, whichever is earlier. Since the bill does not establish an annual filing date, the deadline is unclear. Presumably, the contractor would have to report changes if key personnel are hired and they refuse to read or agree to comply with state ethics laws.

Gifts

The bill broadens the scope of the law requiring contractors, in

order to be awarded a large contract with a state agency, to certify that they have not made gifts to the awarding agency. It also makes other changes to this law.

Under current law, the recipient of a large state contract must certify that no gifts were given between the date the agency began planning the contract and the date it was executed, by the person, business, or any officer, director, shareholder, member, partner, managerial employee of his business or their agent who participated substantially in preparing the bid or contract proposal or negotiating the contract to (1) any public official or state employee who participated substantially in preparing the bid or request for proposal or negotiating or awarding the contract or (2) any official or employee of any agency that supervises or makes appointments to the contracting agency.

By law, any bidder or proposer that does not make these or related certifications must be disqualified and the agency must award the contract to the next highest ranked proposer or the next lowest responsible qualified bidder or seek new bids or proposals.

The bill:

1. allows any official of the firm authorized to sign state contracts to make the certification, rather just the one authorized to sign the specific large contract;
2. expands the scope of the gift ban in the certification, requiring all personnel substantially involved in preparing bids or proposals or negotiating state contracts to certify that they have not given gifts, at any time, to state contracting personnel or their supervisors; and
3. requires contractors to generally certify that all of their bids or proposals are without fraud or collusion, instead of just the present bid or proposal.

Under current law, the person authorized to execute a large state contract for a state or quasi-public agency must certify that the

selection process was devoid of collusion, gifts (either promised or received), compensation, fraud, or inappropriate influence. The bill allows any official or employee of the agency authorized to sign state contracts (including those valued at below \$500,000) to make this certification. It eliminates a requirement for bid specifications or requests for proposals to include the beginning date of the project's planning.

The bill states that the certification must be filed annually or not later than 30 days after any change to the affirmation, whichever is earlier. Since the bill does not establish an annual filing date, it is unclear what is meant by this provision.

Anti-discrimination

The bill requires all contractors with state or municipal contracts to (1) annually file representation and documentation that they comply with state anti-discrimination laws and (2) update the information within 30 days after any change. Under current law, prospective contractors file the representation and submit documentation when they are seeking contracts valued at less than \$50,000 or \$50,000 or more, respectively.

Consulting

The bill broadens the scope of the law that requires agencies, in certain cases, to obtain an affidavit regarding the use of consultants before awarding a contract to purchase goods or services worth more than \$50,000 in a calendar or fiscal year. Under current law, the chief official of the bidder awarded the contract must supply an affidavit on whether any consulting agreements have been entered into in connection with the contract. The bill (1) extends the requirement to apply to all bidders, not just those awarded the contract; (2) requires the bidder to attest to whether it has ever entered a consulting agreement on any state contract for the purchase of goods or services worth \$50,000 or more; and (3) eliminates the requirement that the affidavit be written. It requires the affidavit to be filed annually and an update to be filed within 30 days after any change.

Under current law, the affidavit must indicate whether the consultant's duties include any communication concerning the business of the contracting agency, whether direct or indirect. The bill extends the scope of the affidavit to include communications concerning the business of any state agency, not just the contracting agency.

§ 6 — PREQUALIFICATION APPLICATION

By law, with certain exceptions, contracts for the construction, reconstruction, alteration, remodeling, repair, or demolition of a public building or other public work estimated to cost more than \$500,000 must be awarded through competitive bidding to the lowest responsible prequalified bidder. The bill eliminates the requirement for a prequalification applicant's financial statements to be prepared by a CPA if the applicant is being assisted by a certified community development financial institution. Instead, the bill requires such applicants to provide only financial documents required by the institution to qualify for the program. The bill also eliminates a requirement that the financial statements contain information on the applicant's plant and equipment and bank and credit references.

The bill defines a certified community development financial institution as a community development bank, credit union, or loan or venture capital fund that (1) provides financial products and services in economically distressed markets and (2) is certified by the U.S. Department of the Treasury's Certified Development Financial Institution Fund.

The bill also specifies that each applicant must provide a bonding company letter that states its aggregate work capacity and single project limit bonding capacity. Under current law, the bonding company and maximum bonding capacity are included in the applicant's financial statements.

§ 7 — SET-ASIDE PROGRAM

By law, state agencies and political subdivisions, other than

municipalities, must set aside 25% of the total value of all contracts they let for construction, goods, and services each year for certified small contractors. The agencies must further set aside 25% of the set-aside value (6.25% of the total) for exclusive bidding by certified small minority-owned businesses.

The bill potentially expands the people and businesses that may be certified as small businesses by eliminating the requirement that (1) a small contractor do business under the same ownership or management for a year before it is certified and (2) the requirement that at least 51% of a small contractor's ownership is held by someone with authority over daily operations, management, and policies and who receives beneficial interests. It eliminates the requirement for DAS to maintain a pre-certification list of small contractors that do not meet the one-year requirement for certification since the bill eliminates the need for the list.

The bill prohibits a small contractor from receiving certification if it is affiliated with another person and together their revenues exceed \$15 million. By law, "affiliated" means a person directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person. "Control" means the power to direct or cause the direction of the management of and policies of any person, whether through the ownership of voting securities, by contract, or through any other direct or indirect means. Control is presumed to exist if a person directly or indirectly owns, controls, holds with the power to vote, or holds proxies, representing 20% or more of any voting securities of another person.

§ 8 — CONTRACTOR EVALUATIONS

By law, public agencies must, after the completion of a contract, evaluate the performance of contractors and, to the extent known, subcontractors. Political subdivisions may rely on the contractor's evaluation of subcontractors. Current law protects public agencies and their employees and certifying officials from contractor losses or injuries resulting from the evaluation unless they acted willfully,

wantonly, or recklessly.

The bill extends this protection to any person for any loss or injury sustained by a contractor or subcontractor resulting from the evaluation. This means contractors who complete evaluations of subcontractors are protected.

§ 9 — REPORT ON RESIDENT BIDDERS

The bill requires the DAS commissioner, by January 1, 2012, to submit a report to the governor and Labor Committee. The report must (1) analyze any laws or economic factors that disadvantage resident bidders in submitting the lowest responsible qualified bid (presumably for a state contract), (2) determine why any laws intended to give preference to state citizens for employment on public works projects are not being enforced, and (3) recommend administrative or legislative action to increase the number of state contracts awarded to resident bidders. Such recommendations must not violate the Constitution's Commerce Clause (Article 1, Section 8, Clause 3). The commissioner must consult with the transportation, public works, and labor commissioners and the president of UConn (or their designees).

By July 1, 2012, DAS must use the report's findings to develop and implement a program to increase the number of state contracts awarded to resident bidders. The program may include preferences for in-state firms but must not violate the Commerce Clause.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 15 Nay 0 (04/01/2011)